

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the)	
Pay Telephone Reclassification)	CC Docket No. 96-128
and Compensation Provisions of)	
The Telecommunications Act of 1996)	

**WORLDCOM, INC.
REPLIES TO COMMENTS ON
PETITIONS FOR CLARIFICATION AND RECONSIDERATION**

WorldCom takes this opportunity to respond to Comments submitted by the Association of Communications Enterprises (“ASCENT”) and the RBOC Payphone Coalition (“RBOC Coalition”). ASCENT and the RBOC Coalition justify the Commission’s decision to make First Facilities-based carriers (FFBs) directly responsible for their reseller customers’ Interim Compensation obligations by maintaining that resellers have already compensated FFBs for their share of Interim Period Compensation through the rates they paid for interexchange service. This claim is not true, and in order to prevent future disputes and litigation the Commission must at a minimum make clear that if it adheres to its decision making FFBs directly responsible for their reseller customers, FFBs are entitled to surcharge resellers for Interim compensation paid on their behalf. The Commission must also at a minimum make every reseller with its own CIC directly responsible for Interim Compensation payments. Such resellers obtain service from multiple FFBs, and due to the absence of payphone specific coding digits, individual FFBs do not have the ability to determine how much of the amount the Commission will allocate to such

resellers is attributable to traffic that was routed from each underlying FFB network. Having allocated Interim Compensation responsibility according to the amount of traffic routed to each CIC, it is administratively necessary to make the sole user of a CIC directly responsible for Interim Compensation payments allocated to that CIC. The Commission also may not assign FFBs a direct payment responsibility on behalf of switch-based resellers (SBRs). Until November 23, 2001, SBRs were directly responsible for compensating payphone service providers (PSPs) for coinless payphone calls they complete. Assigning direct payment reasonability to FFBs for SBR Interim Compensation obligations is therefore retroactive rulemaking. The Commission must reconsider and make SBRs directly responsible for Interim Period Compensation.

The Commission also failed to utilize procedures that maximize accuracy within the limitations of the available data. The new call count is biased upwards in at least two ways: 1) it was established using a simple average; and 2) it fails to account for the continual decline in the average number of completed calls per phone over time. The data the Commission relied upon has a wide variation between upper and lower values, a variation equal to two standard deviations. Simple averages are not appropriate statistical measures under these circumstances. Data submitted by WorldCom and SBC confirm annual declines in volume of calls per phone. The Commission must take these declines over time into account since a per phone call proxy will be required indefinitely for payphones that do not transmit payphone specific coding digits.

I. The Commission May Not Make First Facilities-based Carriers Retroactively Responsible For Switch-Based Reseller Customers or Resellers With CICs

ASCENT and the RBOC Coalition both defend the Commission's decision to make First Facilities-based Carriers (FFBs) directly responsible for payphone compensation payments for

their reseller customers by arguing that FFBs are not just responsible for directly paying on behalf of their resellers customers, they are solely responsible because resellers have already compensated payphone service providers (PSPs) through the rates charged by FFBs.¹ ASCENT takes this argument to its logical, absurd, conclusion by arguing that since rates have not declined since the Interim Period, resellers have also met their payphone compensation obligations since the Interim Period as well.² On this reasoning, it was never permissible for FFBs to surcharge pure resale carriers for payments made on their behalf, and switch-based resellers never had direct payment obligation to PSPs. This conclusion is directly opposed by the long-standing Commission requirement for switch-based resellers to directly compensate payphone service providers (PSPs),³ and an equally long-standing Order permitting FFBs to surcharge pure resellers for payments made on their behalf.⁴

At issue is whether the Commission established a rule placing a direct payment obligation for FFBs on behalf of their reseller customers that could govern direct payment obligations after *Illinois*⁵ vacated the Commission's Interim Compensation rule, and if not, may the Commission modify these direct payment obligations retroactively? The Commission had defined and established direct payment obligations beginning November 7, 1996. In its First Report and Order it made FFBs responsible for paying on behalf of their pure reseller customers,

¹ RBOC Coalition Comments at 15; ASCENT Comments at 3,5.

² *Id.*, at 5-6.

³ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, First Order on Reconsideration, ("First Reconsideration Order"), Released November 6, 1997, &92.

⁴ *Id.*, &83.

⁵ *Illinois Public Telecomm. Ass'n v. FCC*, ("Illinois") 117 F.3d (1997).

but FFBs were not responsible for paying on behalf of their switch-based reseller customers.⁶ Thus, FFBs were not responsible for directly paying PSPs on behalf of their SBR customers, the SBRs were directly responsible. SBR direct payment obligations continued until November 23, 2001. There is also no doubt that the Commission has modified these direct payment obligations retroactively in its Fourth Reconsideration Order. The Commission stated that it was omitting resellers from direct payment obligations for the reasons identified in its Second and Third Reconsideration Orders.⁷ Both those Orders make clear that the Commission modified its rules governing the party with the direct payment obligation.⁸ The Commission may not apply rules that were only made effective as of November 23, 2001 back to November 7, 1997.

Not only is the Commission required as a matter of law to make SBRs directly responsible for their Interim Period obligations, it should also make pure resellers with carrier identification codes (CICs) directly responsible for making Interim Period payments to PSPs. Based on its requests for data, it appears that the Commission will allocate Interim Period compensation among IXC's according to the share of total coinless call attempts routed to each CIC.⁹ Some pure resellers had their own CICs (as do SBRs) and most obtained service from multiple FFBs. The Commission has yet to devise the allocation based on this data request, but there does not appear to be a non-arbitrary means of allocating direct payment responsibility for

⁶ First Reconsideration Order, &92.

⁷ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Report and Order ("Fourth Reconsideration Order"), Released January 31, 2002, &17.

⁸ Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Second Order on Reconsideration ("Second Reconsideration Order"), Released April 5, 2001, &&1,11,15,19,21; and Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket 96-128, Third Order on Reconsideration ("Third Reconsideration Order"), Released November 21, 2001, &&1, 6.

⁹ Letters from Jeffrey Carlisle, December 20, 2001.

resellers with CICs among FFBs.¹⁰ Therefore, the Commission should also make pure resellers who had CICs during the Interim Period responsible for directly compensating PSPs for Interim Period compensation.

In any case, contrary to claims made by ASCENT and the RBOC Coalition, the Commission should understand that WorldCom did not surcharge resellers during the Interim Period, nor did it increase rates to cover potential Interim Period Compensation responsibilities on behalf of resellers. Neither party offers evidence of such a rate increase. Moreover, market and regulatory conditions militated against a general rate increase to cover potential Interim Compensation obligations on behalf of reseller customers. Common carriers such as WorldCom are required to offer terms and conditions in a non-discriminatory fashion. Payphone originated calls constitute a small proportion of the business of the large majority of WorldCom's reseller customers. Raising rates for these resellers to cover payment obligations to which they contribute a small share, would not be sustainable in the highly competitive market for interexchange service. WorldCom made no attempt to do so. Neither was WorldCom able to surcharge resellers during the Interim Period. Doing so would have required knowing the number of payphone originated calls completed by the customers. The absence of payphone specific coding digits precluded WorldCom from surcharging resellers during the Interim Period. WorldCom has not been reimbursed by its resellers for any Interim Compensation it has already paid on their behalf. These are refunds to which WorldCom is entitled. Given reseller insistence that they have already compensated FFBs for their share of Interim Period Compensation, the Commission should ideally require all resellers to directly compensate PSPs for the Interim Period. If the Commission retains any form of requiring FFBs to directly compensate PSPs for

¹⁰ WorldCom Comments at 4.

the Interim Period, the Commission must, at a minimum, make clear that FFBs are entitled to surcharge those customers and their successors for any Interim Payments made on their behalf.

II. The Commission Failed To Utilize Procedures That Maximize Accuracy Within The Limitations Of The Available Data.

The RBOC Coalition defends the Commission's new estimate of 148 calls per phone by arguing that the Commission is entitled to rely on the available, albeit imperfect, data.¹¹

WorldCom's Comments also recognized that the data available for this time period is crude and imperfect. For that very reason, the Commission must utilize available procedures that minimize the inaccuracy of such data. The RBOC Coalition fails to address Sprint's argument that the data represents a self-selected sample that used a completion methodology that upwardly biased the call count.¹²

The RBOC Coalition attempts, but utterly fails, to justify using a simple, rather than a weighted average. It argues that the upward bias is not that large, "...since the numbers fall within a relatively narrow range."¹³ In fact the range is wide, not narrow, varying from a low of 139 to a high of 163, a range of 24 calls. The high value is 17 percent higher than the low value, with more than two standard deviations between them. If the range is so narrow, surely the RBOC coalition would not mind setting the call count at the low end of the range. The 5.4 difference between the weighted and simple average call counts is very significant to WorldCom. The Commission's reliance on a simple average has resulted in WorldCom's Interim Compensation obligation being 3.8 percent above the less unbiased estimate of 142.6. The simple average represents a significant overpayment for WorldCom and other IXCs.

¹¹ RBOC Coalition Comments at 13.

¹² Sprint Petition at 5, fn8.

¹³ RBOC Coalition Comments at 14.

The RBOC Coalition also fails to respond to WorldCom's general point that call counts per phone have been declining over time. In response to its criticism that WorldCom did not submit its data, WorldCom does so in the table below.

**Completed Calls Per Phone:
WorldCom Data**

Compensation Quarter	Completed Calls per Validated ANI
1Q 98	94
1Q 99	74
1Q 00	57
1Q 01	47

Our data show that completed calls per phone have declined an average of 16.7% per year since the Interim Period. WorldCom has examined the data SBC submitted for the same time periods, and far from refuting WorldCom's claim that call counts per phone have declined since the Interim Period, SBC's data confirms the same trend. The table below shows these calculations.

**Calls Per Phone Routed to IXC POPs:
SBC Data¹⁴**

Compensation Quarter	Calls per Phone
4Q 97	482.4
4Q 98	487.6
4Q 00	394.9
3Q 01	442.8

¹⁴ SBC Ex Partes, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, January 22, 2002 and March 15, 2002. SBC did not provide data on number of payphones for 1999, so it was impossible to calculate calls per phone for any quarter in that year.

SBC's data shows that calls per phone have declined an average of 2.7% per year since the Interim Period. While WorldCom's figures show greater declines, they are more accurate since they are limited to completed coinless calls, while SBC's data includes completed and incomplete coinless calls. WorldCom recommends the Commission obtain additional data from other major IXCs to ensure its estimate of declining volumes of completed coinless calls is complete. Moreover, although SBC's data show a slight (1%) one year increase in calls per phone, the Commission intends to use the 148 call count for all phones that do not receive payphone specific coding digits for many years to come. The RBOC Coalition fails to address the obvious, and growing, amount of overpayment in each year (as average volumes continue their decline) associated with these phones.

Conclusion

For the reasons stated herein, WorldCom urges the Commission to adopt the positions advocated in these Reply Comments.

Sincerely,

Larry Fenster

Larry Fenster

Statement of Verification

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct.

Executed on May 15, 2002

Larry Fenster

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Certificate of Service

I, Elizabeth Bryant, do hereby certify that copies of the foregoing Petition for Reconsideration of WorldCom Inc. were sent on this 15th day of May, 2002, via first-class mail, postage pre-paid, to the following:

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